Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

October Term, 1994

Russell N. Kell, Petitioner

vs.

US Dept. of Veterans Affairs, Respondent

PETITION FOR CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Petitioner, Russell N. Kell, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Federal Circuit .

Russell N. Kell

Pro Se

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63PP

Questions Presented

1. Did the failure of the US Dept. of Veterans Affairs to provide evidence in its possession, when requested in several timely and proper discovery requests, allow for a fair and equitable decision in this case, and does the same failure allow for fair and reasonable access to the Court?

2. Do apparently false and contradictory statements by Executives of the US Dept. of Veterans Affairs allow for a fair and equitable decision in this case, and do the same statements hinder the petitioner in fair and reasonable access to the Court?

3. Is the US Dept. of Veterans Affairs required to follow the law in its management decisions and properly consider

the employee's performance and conduct prior to initiating a reassignment?

4. Did the US Court of Appeals for the Federal Circuit properly consider a preceding opinion, Marano V. Department of Justice, 2 F.3d 1137, 1139 (Fed. Cir. 1993).

5. Was the determination by the Administrative Law Judge not to consider Mr. Kell's allegation of waste and abuse relative to the configuration of the telephone system as whistle blowing correct?

6. Was a fair and impartial hearing possible when the Administrative Law Judge in this case allowed the testimony of Mr. Sheehy, Mr. Kell's then current supervisor, to take place in the presence of Mr. Sheehy's supervisor, Mr. Hall? Mr. Hall was the person who recommended Mr.

Kell's reassignment and the Associate Director.

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Appendix B:	Final Order of the Merit System Protection Board dated 03/14/94 in Case # SE-1221-93-0219-W-1.
Appendix C:	Memorandum of 10/27/92.
Appendix D:	Excerpt Memorandum of 10/02/92.
Appendix E:	Mr. Smith's formal

Appendix E (Cont.) statement of what a fully satisfactory evaluation means.

Appendix F: Excerpt from Annual Risk Report of Sept. 17, 1991.

Appendix G: Excerpt from Annual Risk Report of Sept. 25, 1992.

Appendix H: Fifth & Ninth Amendments of the Constitution.

Table of Authorities

CASES

Marano v. Dept of Justice, 2 F.3d 1137, 1142 (Fed. Cir. 1993) quoting 134 Congressional Record 27, 854 (1988)

Constitutional Provisions

Amendments V & IX of the United states Constitution as set forth in Appendix H.

Statues and Regulations

5 USC 7703, 5 USC 7701, 5 CFR 430.201, 5 CFR 430. 203, 5 CFR 430.303, and 5 CFR 430.404.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Federal Circuit is reported as Russell N. Kell v. US Dept. of Veterans Affairs Case # 94-3280, and appears in Appendix A to this Petition. The decision of the Merit Systems Protection Board dated March 14, 1994, is reported as Russell N. Kell v. US Dept. of Veterans Affairs Docket No. SE-1221-93-0219-W-1, and appears in Appendix B to this Petition. The decision of the Administrative Law Judge dated Nov. 1, 1993, is reported as Russell N. Kell v. Dept. of Veterans Affairs, Agency Docket No. SE-1221-93-0219-W-1, and is available as part of the case record. In addition, Mr. Kell has filed with the Merit System Protection Board to reopen the case based

on the new and material evidence. The Board has formally stated that there is no provision in the law to allow for reopening the case.

JURISDICTION

Title 28 USC Section 1254. The US Court of Appeals for the Federal Circuit issued a decision in this case (Case #94-3280) on September 13, 1994 and provided me with notice of 90 days to file with Supreme Court of the United States. Only the US Court of Appeals has had the opportunity to make a formal decision on the evidence that was withheld.

Constitutional and Statutory Provisions Involved

Amendments V & IX of the United states Constitution as set forth in Appendix H. 5 USC 7703, 5 USC 7701, 5 CFR 430.201, 5 CFR 430. 203, 5 CFR 430.303, and 5 CFR 430.404.

Statement of the Case

The US Dept. of Veterans Affairs reassigned Mr. Kell from the position of Veterans Services Officer (Division Chief) to the position of Field Examiner on November 16, 1992. On November 29, 1992, Mr. Kell filed a complaint with the US Office of Special Counsel (OSC) alleging the reassignment was in fact due to whistle blowing and discrimination. The petition currently before the court only

deals with the whistleblowing issue. Upon conclusion of the OSC investigation, Mr. Kell filed a complaint with the US Merit Systems Protection Board. A hearing was held in August of 1993, and a decision was rendered on November 1, 1993, denying reinstatement. A brief summary of the decision of the Administrative Law Judge is that the Whistle blowing was not determined to be a contributing factor to Mr. Kell's reassignment. A Petition for Review was submitted to the Merit System Protection Board on December 6, 1993. The Merit System Protection Board denied Mr. Kell's Petition for Review on March 14, 1994. Mr. Kell filed a timely appeal with the US Court of Appeals for the Federal Circuit and received a Judgment entered September 13, 1994. This appeal is filed.

Question One

In July of 1994, I obtained additional evidence, in the form of two memorandums concerning the staffing of Veterans Services Division. These memorandums were apparently inadvertently provided by the US department of Veterans Affairs in a matter under another jurisdiction. Although I immediately notified the US Court of Appeals for the Federal Circuit of the evidence and eventually was able to have the evidence admitted, the Court of appeals still did not provide the relief that I sought. I would like to direct this court's attention to the forth and fifth separate and timely requests that were made in an attempt to obtain these most important and critical documents. Although I am not able to provide full

copies of the voluminous evidence in this case, I have done my best to provide relevant excerpts in the Appendix, or quote from the evidence in the text. The fourth request was presented at the deposition of Mr. Smith, who was then the Director of the VA Outpatient Clinic and Regional Office. My reassignment was accomplished with Mr. Smith's approval. The fifth request was presented at the deposition of Mr. Hall, who was then the Associate Director of the VA Outpatient Clinic and Regional Office and who initially recommended my reassignment.

Please note each of the two depositions included a fourth or fifth discovery request which was specific as to the types of documents needed. Both were requests for production of documents. Paragraph 8 of both requests specifically

request:

"...8. Any reports or written recommendations regarding staffing of Veterans Services Division, which were prepared or dated from January, 1992 to present..."

The requests were both entered as specific exhibits in the respective depositions without objection. Both Mr. Smith and Mr. Hall were present when these requests were presented and the agency's counsel was present!

My argument is that failure to submit the documents had an adverse impact upon my case which resulted in an unjust decision. The memorandum dated October 27 1992 has a clear effect on the case. It contains statements that will not hold up

under close review. A Field Examiner at the GS-12 level requires skill:

"...in situations requiring judgment in applying regulations to complex circumstances of individual claimants and institutions..."

Lines 10 through 12 from paragraph one of Appendix C partially quoted above indicate that I have difficulty in these areas. If I have the difficulty, then why reassign me to a position that requires the skills?

It indicates that I have difficulty in areas where I am in fact blowing the whistle, and the difficulties I have had are because I blew the whistle. The agency could not support what is said relative to difficulties I encountered, and for that

reason had a lot to gain by not submitting this memorandum (App. C) from the Associate Director to the Director. The subject of the memorandum is "VSD Staffing". In fact, this memorandum was, in part, contradictory to performance evaluations the agency has given to me both before and after the reassignment. These evaluations have long been a part of the record in this case and are overall complimentary of me in the area of applying regulation to complex circumstances.

The Agency makes the argument in its Response to Petition for Review before the Merit Systems Protection Board on Page 4 :

"...Several employees working under Appellant before his reassignment

testified that Appellant was a poor supervisor..."

First, the current employees had no direct knowledge of what the key elements in my performance standard were relative to supervision and according to the current employees' testimony made no communication of any such feelings to either the Director or the Associate Director before my reassignment.

Second, in the formal appraisals, I was marked fully satisfactory or better by both the Director and the Associate Director.

Third, the only then current employee to have contacted the Associate Director or Director prior to the reassignment is Mr. Dan Derry. Please note Mr. Derry is noted in the memorandum of October 27, 92.

In fact, Mr. Derry did become first line supervisor and subsequently was selected as Veterans Services Officer to fill the position I vacated upon reassignment. It certainly would have caused the Administrative Law Judge to weigh Mr. Derry's testimony differently if known that Mr. Derry was discussed as a candidate for the position that I had been forced to leave through reassignment. No other current employees spoke with the Directors office prior to my reassignment. Any comments made after reassignment are not relevant.

Certainly the relevance of this most important and critical document that was not submitted by the Agency when properly requested can be seen, Certainly, the Administrative Law Judge would have provided different weight to Mr. Derry's

testimony, given that Mr. Derry not only stood to gain from my reassignment, but in fact did gain a promotion to my previous position after my reassignment.

The second memorandum (App. D) was not submitted when properly requested. This memorandum dated October 2, 1992 from Mr. Sheehy to the Associate Director is also relevant to the case. At the end of the next to last paragraph, this October 2, 1992 memorandum indicates ADP Security as a change, when in fact the Administrative Judge pointed to the fact that there was no planned change to target security as a most significant weakness to my case. Target Security is in fact a major portion of our ADP Security System.

Overall, these documents are critical in establishing additional inconsistency

in testimony by Mr. Hall and Mr. Smith.

Withholding the documents otherwise hindered development of evidence to support my contention of whistle blowing. Of critical significance is the temporal relationship between these documents and when my reassignment first appears in Mr. Halls notes, September 29, 1992. This note was submitted as evidence at the original hearing. It is certainly probable that the Administrative Law Judge would have made a different decision if my attorney and I had these documents during the hearing. It would result in a different decision now if an opportunity for a new hearing is afforded.

Question Two

I submit to the Court that the Director and the Associate Director apparently have made false statements. Either the performance appraisals signed by the Director and Associate Director are true or their statements made to the Administrative Law Judge and made during their depositions are true, but not both are true. I hope that this court will give consideration to an issue which the MSPB apparently chose to disregard and the Court of Appeals did not address.

At any time during the approximately 18 month period covered by these appraisals, it only required a stroke of the pen to advise me of any concern with my performance. No derogatory comments were made on either of the appraisals, no significant need for improvement, no

concern of any type was listed. In fact the last appraisal was completely absent of any comment at all, indicating any previous problem had been resolved. I was not advised informally of any legitimate concerns with my performance. Only when the reassignment was suggested was there any mention of a performance problem, and then there was no connection to the key elements of the formal performance standards I was working under while I was in the position. The reason good ratings were given to me is clear. There was no problem with my performance at any time. My performance was not a problem and my conduct was not a problem.

Why does the Administrative Law Judge refer to me as a problem employee on the second line of page 14 of his initial decision? The reason is because of

statements made by Mr. Hall and Mr. Smith that contradicted the formal performance appraisals that they had both signed and provided to me? The real reason I was a problem employee was because I blew the whistle.

Before We leave this area, let me remind all that my performance standards including all of the key elements related to supervision were prepared by the Associate Director and approved by the Director. It specified through key elements what satisfactory performance would be. In addition the Director then specifically specified what a fully satisfactory rating indicated about the performance of the employee, and this document was provided in evidence(App. E). This also contradicted the after the fact testimony of the Director and Associate

Director. The Associate Director and Director rated me fully satisfactory on two separate occasions. If the standard did not measure any aspect of my performance adequately (including supervision), they could have changed the standard at anytime. The most recent rating was completed after the reassignment had taken place, and no concern with my performance was indicated for a period more than six months prior to my reassignment.

Once I blow the whistle, or I file a complaint with the Office of Special Counsel; my performance leaves something to be desired. I would think these after the fact statements made by management officials on performance to be so preposterous as to be insulting to the Court.

I suggest that the agency could not sustain a performance evaluation less than at least fully satisfactory, because my performance was at least that good. I also suggest that the evidence shows I was reassigned because I blew the whistle, not because of my performance.

Question Three

Part of my petition for appeal rests on the fact that neither the Administrative law Judge nor the MSPB adequately or properly considered 5 CFR 430.203 which states in part:

"...Performance means the employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employees position..."

This definition of performance is reiterated with little change in substance in 5 CFR 430.303 and 430.404 for Senior Executive Service employees and Performance Management Recognition System employees respectively. I would like to state at this time: I do not believe the Administrative Law Judge could have used this definition of performance when his decision was made.

In addition Neither the Board nor the Administrative Law Judge properly or adequately considered 5 CFR 430.201 which states in part:

"...(b) Purpose: It is the purpose of this subpart to ensure that performance appraisal systems for employees are use as a tool for executing basic management and supervisory responsibilities by..."

"...(4) Using the results of performance appraisal as a basis for adjusting basic pay and determining performance award, training, rewarding, reassigning, promoting, reducing in grade, retraining, and removing employees..."

I again point out that the definition (App. E) provided by the Director to the Staff as to what a fully successful evaluation meant has long been a part of this case record. Mr. Smith, the same Director, approved two evaluations that rated Mr. Kell as fully successful. It is beyond comprehension to think that Mr. Kell was reassigned for poor performance, and Mr. Kayotawape, then Personnel Officer and the Agency's own witness, indicated Mr. Kell's conduct was impeccable.

The question presented to the Court is

clear. Is the US Dept. of Veterans Affairs required to follow the law in its management decisions and properly consider the employee's performance and conduct prior to initiating a reassignment? It is clear the Dept. of Veterans Affairs did not follow the law in this case. The reason is that Mr. Kell blew the whistle, and he was reassigned for that reason without regard for the law.

I am not in any way arguing with the right of the Dept. of Veterans Affairs to reassign employees to any assignment necessary. I am only stating that the Dept. of Veterans Affairs has an obligation to follow the law when they make a reassignment, and arguing that when I was reassigned, the law was not complied with.

Question four

In this case there is a strong nexus between the time that Mr. Kell made the protected disclosures and the date of his reassignment. Most important, when compared to the previous risk analysis (App. F) dated September 17, 1991, is the annual report Mr. Kell filed on September 25, 1992 (App G). Excerpts from these reports are filed in Appendix F and G respectively. It is important to note that these reports were prepared in the format provided by the Agency and answer the specific questions the Agency has directed relative to fraud, waste, and abuse.

When compared to the 1991 report, the September 25, 1992 risk analysis exhibited more than a 100% cumulative score increase in the risk of gross fraud waste and abuse

to the Target Computer System. Then the first note regarding Mr. Kell appears in Mr. Hall's notebook on Sept. 29, 1992, a mere four days later.

Please note The Administrative Judges Opinion on page 16 states:

"...Further, the appellant had been making essentially the same report for a matter of some years and there is nothing to suggest that the reports made just prior to his reassignment became substantially more critical or put Hall in a bad light. Thus there is nothing in the timing of the reports and the personnel action to suggest that the reports were a contributing factor...".

Clearly the Administrative Law Judge has made a serious error in his reasoning and

consideration of the evidence, and his conclusion concerning nexus is false. The evidence indicates a drastic change in reports, and the report preceding the reassignment was significantly more critical.

The Administrative Judge continues this error on Page 11 of his decision. Please note lines 10-14 as follows:

"...Appellant did not support this argument by submitting any evidence which showed how the "linked" commands relate to the agency's ability to carry out its mission or otherwise necessarily lead to the conclusion that the system is at greater risk of compromise..."

In addition, lines 11-16 on page 9 of the Administrative Judges decision follow:

"...First there is no mention of this practice in any of the reports made by the appellant prior to his reassignment. If appellant reasonably believed that this particular practice put the system at significant risk of compromise, one would expect that it would be reflected in his reports, which are supposed to address precisely that issue..."

Mr. Kell mentioned the risk of the practice using the specific format and answering the specific questions that the agency required. Mr. Kell followed the directive's of the agency and his superiors when he filed these reports. Mr. Kell was blowing the whistle in the specific manner that the agency had specified it be done.

Mr. Kell has always contended that his

reports on Target Security, the telephone system, and his 1985 fraud referral were contributing factors in his reassignment. It is well established that "one of the many possible ways to show that the whistleblowing was a contributing factor in the personnel action is to show that the official taking the action knew (or had constructive knowledge) of the disclosure and acted within such a period of time that a reasonable person would conclude that the disclosure was a factor in the personnel action..." Marano v. Dept of Justice, 2 F.3d 1137, 1142 (Fed. Cir. 1993) quoting 134 Congressional Record 27, 854 (1988).

Question Five

My contention is that the Administrative Law Judge improperly denied a hearing on the issues of waste and abuse on the telephone system.

I specified the telephone issue in my initial claim for intervention with the US Office of Special Counsel, and that office wrote back and indicated I had an individual rite of action with the MSPB . The Administrative Law Judge refused to hear the issue relative to the telephone system. As I can best determine, I did not use the right words in my initial complaint to the Office of Special Counsel or to the Director. I have one question for the court to consider. If an agency is tasked with service to veterans and the agency takes action to abuse veterans; can

the court think of any such action that would not be "gross" abuse? Apparently, my oversight in using the word "abuse" rather than the phrase "gross abuse of authority" and "waste" rather than "gross waste" in my whistle blowing and in my original referral to the Office of Special Counsel means I do not get a hearing before MSPB on the issue. My argument is that the law protecting whistle blowers was intended to protect individuals who make the type of disclosure that I made regardless of the particular language I used in making the disclosure.

Question Six

The first witness called at the hearing before the Administrative Law Judge was Mr. Michael Sheehy. Mr. Sheehy provided testimony at the hearing in the presence of his supervisor, Mr. Hall. Mr. Hall was also the Associate Director and the person who recommended my reassignment. Not only did having Mr. Sheehy's supervisor in the hearing room color Mr. Sheehy's testimony, but it also may have allowed Mr. Hall to tailor his subsequent testimony. I find the fact that this was allowed to occur reprehensible and possibly, by itself, the basis for a new hearing.

Summary

One argument I have indicated is that the Fifth Amendment of the Constitution provides for my protection in this case. Particularly, I would like to point out that I was an incumbent in the Veterans Services Officer Position for several years. This incumbency was then denied me, and granted another employee. I submit that this incumbency that I had earned after more than fifteen years of Government service is similar in characteristics to the grade and salary I had earned. I also suggest that the rights of incumbency may have some of the protection given a person whose salary or grade level has been reduced. I believe this is what the Whistleblower's Protection Act intended.

I submit that the withholding of the documents excerpted in Appendix D has precluded the intended due process of the fifth amendment and prohibited the type of access to the courts desired by those who drafted the constitution. The withholding of these documents did not allow for the Administrative Law Judge in this case to properly weigh the facts, and contributed to most of the other errors indicated.

I submit that the Administrative Judge made a grievous error in not considering the Risk Analysis report Dated September 25, 1992 . This report is in the specific format required by the US Dept. of Veterans Affairs to report fraud, waste, and abuse.

I believe any person has the right to a fair hearing, fair consideration of all the evidence, and a fair and equitable

decision. The failure of the Administrative Law Judge to consider the September 25, 1992 report coupled with the absence of evidence noted in Appendix D and other inadequacies noted above prevented a fair and equitable decision. My contention is that the Ninth Amendment provides additional protection to me from the type of decision received. Although I have made a separate request the case be reopened by the Merit System Protection Board, the Board indicates that there is no provision for reopening provided for in the law. Where is the remedy for the withholding of the documents? Where is the remedy for what I believe to be clear and unmistakable error on the part of the Administrative Judge?

I have done my best to provide sufficient grounds for the court to grant a petition. I pray you will grant a petition and reasonable costs.

Russell N. Kell

Pro Se

APPENDIX A

United States Court of Appeals for the

Federal Circuit

94-3280

Russell N. Kell,

Petitioner

v

Department of Veterans Affirs,

Respondent.

Judgment

ON APPEAL from the Merit Systems

Protection Board

in CASE NO(S) SE1221930219-W-1

This CAUSE having been heard and

considered, it is

ORDERED and ADJUDGED:

Per Curiam (ARCHER, Chief Judge, RICH, and

NEWMAN, Circuit Judges):

AFFIRMED. See Fed. Cir. R. 36.

DATED SEP 13 1994 ENTERED BY ORDER OF THE

COURT Francis X Gindhart. Clerk

APPENDIX B

UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

DOCKET NUMBER

SE-1221-93-0219-W-1

Date: Mar 14, 1994

RUSSELL N. KELL, Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Agency.

S. Jay Seymour, Esquire, Lane Powell Spears Lubersky, Anchorage, Alaska, for the appellant.

Glen E. Woodworth, Esquire, Anchorage, Alaska, for the Agency.

BEFORE

Ben L Erdreich, Chairman

Jessica L. Parks, Vice Chairman

Antonio C. Amador, Member

ORDER

After full consideration, we DENY the Appellant's petition for review of the initial decision issued on November 1, 1993, because it does not meet the criteria for review set forth at 5 C.F.R. 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. 1201.113(b).

APPENDIX C

Date: October 27, 1992

From: Associate Director (001)

Subj: VSD Staffing

To: Director (00)

1. I recommend reassignment of Russell Kell to a technical position in VSD. He need not be physically located in the Division. He would report directly to the Division Chief. Initially he would be doing most of his current non-supervisory duties (items 1a, 1b, and 1c). Ultimately he would add other duties in the field (items 1d, 1e, and/or 1f), as other staffing uncertainties are resolved, i.e. Dan Derry, first line supervisor and new VSO. This option has the advantage of using Russ' technical expertise to ease the transition to the new VSD alignment. His strengths lie with making technical

decisions within clearly structured parameters. He is also good at making presentations of general information, e.g. service officer training, TAP briefings, etc. He has had difficulty with situations requiring judgment in applying regulations to the complex circumstances of individual claimants and institutions. Many of the field duties require this type of judgment. With proper supervision he may be able to handle all field duties.

a. Coordinate responses to inquiries which require more than routine handling by VBC's. This would include routine Congressional letters and calls.

b. Prepare VSD's DOOR input and routine reports. His contact with fellow VSD staff would be through the Division Chief. Any contact with VACO would require prior approval of the Division

Chief.

c. Continue Target Security and other current duties that extend beyond the VSD level.

d. Should the current Tap coordinator be selected for the vacant supervisor position, Russ could take over these duties. The new supervisor could take over the coordination of inquiries.

e. should the Dan Derry leave, as he's planning to, Russ could take over the Field Exams and Fiduciary duties. He would not have single signature authority to take adverse actions, e.g. suspending benefits. The Division Chief would have to authorize such actins.

f. Ultimately Russ would be a fulltime field representative. He may be able to do the ELR, as well as Field Exams, Fiduciary and TAP.

2. The other option would be to have Russ in a technical position outside VSD reporting to the Associate Director. These duties would be of sufficient complexity to warrant a GS-12. They would not involve policy making or call for much judgment. They would free our other VBA Chiefs to spend more time on meeting our very heavy workload.

a. He could coordinate the input of DOOR's, IFCAP, reports, etc.

b. He could be VBA quality control coordinator, e.g. have SAO's and SQC been done timely.

c. He could handle inquiries and routine community outreach for the Associate Director.

f. He could be COWC Chairman.

g. He could coordinate CFC, the Bond drive, etc.

Robert "Bert" Hall

APPENDIX D

"...Procedural Changes

Receptionist to VCR if Adjustment vs VBC

if orig/reopened/inquiry

improve WIPP/PIF Codes for better status data

When to go for folders

FOIA not so liberal interpretation

Field Rep input award adjustments by modem

While-you-wait adjustments' FIFO, when does waiting time = need more VCE?

Phones

Second Signature If only one VCE/VCR

ADP Security VBC have What commands (CADJ/CAUT?)..."

..

Appendix E

FULLY SUCCESSFUL PERFORMANCE STANDARD

The performance equates to that which is expected of a fully competent employee and represents a level of accomplishment which is expected of the great majority of employees. It is characterized by a responsiveness to all critical elements of the Performance Plan which is adequate and sufficiently detailed to meet all requirements or expectations of the position and scope of work responsibility. Performance elements and special tasks are accomplished in an orderly manner in that they are complete, accurate and timely. The quality and quantity of assignments are consistently within an acceptable range, as defined in the Performance Plan, and are supportive of organizational goals and objectives. The employee directs

his/her technical skills toward specific critical job elements and applies them effectively.

The employee has performed relatively complex special assignments which have been properly prepared in form and content and accomplished in a timely manner without disruption to regular program responsibilities. The employee expresses himself/herself well orally and writes with clarity and effectiveness. He/She evidences a determination that his/her contribution to goals and objectives meet acceptable standards. Job responsibilities are seriously regarded and related priorities are duly considered in planning and performing assigned responsibilities.

The employee is receptive to guidance and suggestions, follows instructions

conscientiously and functions well as a team member, completing his/her share of responsibility on time. The style or manner in which his/her interpersonal skills are used is supportive of the work group's efforts and demonstrates an ability to work well at varying levels in a variety of circumstances.

Impediments or problems associated with the completion of assignments are resolved in due time by the employee with a minimum of supervisory guidance.

The employee is sensitive to the role of associates and subordinates and his/her work reflects an understanding that good management practices require fair treatment and equality of opportunity for all concerned.

Appendix F

"...Total Risk Evaluation Score 17 (sum of cumulative scores)

( ) High (Total score 39-50)

(x) Moderate (Total Score 14-38)

( ) Low (Total Score 0-13)..."

Appendix G

"...Total Risk Evaluation Score 39 (sum of cumulative scores)

(x) High (Total score 39-50)

( ) Moderated (Total Score 14-38)

( ) low (total Score 0-13)..."

Appendix H

Fifth Amendment

No person shall be held to answer for a capitol or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witnessess against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Eighth Amendment

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.